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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

TRANSPERFECT GLOBAL, INC., TRANSPERFECT TRANSLATIONS INTERNATIONAL, INC., AND TRANSLATIONS.COM, INC., Plaintiff/ Counterclaim defendants, v. MOTIONPOINT CORPORATION, Defendant/ Counterclaim plaintiff.	CASE NO. CV 10-02590 CW/JCS ELECTRONIC CASE FILING DECLARATION OF WILL FLEMING IN RESPONSE TO MAGISTRATE JUDGE JOSEPH C. SPERO'S ORDER [DOCKET 106]

I, Will Fleming, declare:

1. I am the Chief Executive Officer of MotionPoint Corporation.

2. I oversaw the collection of MotionPoint documents for production in response to TransPerfect's document requests in this case, including the collection of both paper documents and electronically-stored-information (ESI), such as emails and computer files.

3. MotionPoint received TransPerfect's first set of discovery requests on November 29, 2010. I then began coordinating with other MotionPoint employees to search for documents. We searched our paper documents, sales database, our shared drives, our source code repository, and files stored on employees' local hard drives. The search was based on our individual and collective knowledge of our file structures and how and where information was archived.

4. For the documents concerning the conception, design, and development of the asserted MotionPoint patents and MotionPoint's products and services practicing those patents, our developers and the inventors searched their paper documents, their shared drives, and their computers' local drives. MotionPoint's developers were Enrique Travieso, Eugenio Alvarez, Meena Radhakrishnan, Collin Birdsey, and Jeff Marder.

5. Enrique Travieso stores his emails locally, organized by recipient. He collected his emails with other developers and customers by going to the particular folders in his email history, and also searched through his paper documents and computer files based on his knowledge of their organization and content.

6. Eugenio Alvarez searched his paper documents, locally stored computer files, and local email archive based on his prior knowledge of its organization and content, and he additionally conducted keyword searches for emails using the terms "translations.com" or "TransPerfect".

7. Meena Radhakrishnan searched through her paper documents and computer files based on her prior knowledge of their organization and content.

8. Collin Birdsey searched through his paper documents and computer files based on his prior knowledge of their organization and content.

9. Jeff Marder searched his local email archive based on technical features he took

part in developing, using the terms "spider", "crawler", and "flash", and reviewing his email history by subject line.

10. I am a named inventor on one of the asserted MotionPoint patents, and I also searched my paper documents, the shared drives and the files of my computer. Based on my prior knowledge of its organization and content, I searched my Outlook email archive.

11. I additionally directed the remaining inventors, Arcadio Andrade and Adam Rubenstein, to search their files.

12. Arcadio Andrade searched through his paper documents and the computer file folders on his local drive based on his prior knowledge of their organization and content, and he carried out keyword searches of his Outlook email history for the terms "competition", "translations.com", "TransPerfect", and "translation technology".

13. Adam Rubenstein searched through his paper documents and computer files based on his knowledge of their organization and content. He also stores documents on the sales database, and the collection those documents took place with the search of the sales files, described in paragraph 16, below.

14. In addition, all versions of source code, as well as other files associated with the code, were extracted from the source code repository and produced.

15. TransPerfect requested sales information for all products and services sold by MotionPoint, whether they practice the asserted MotionPoint patents or not. We collected MotionPoint's financial documents and information covering its sales and billing records extracted from its accounting software and from paper invoices for sales from before MotionPoint began using the accounting software.

16. I directed Adam Rubenstein to search the sales files for MotionPoint's marketing and sales documents. MotionPoint's salespeople are Adam Rubenstein, Ben Field, Charles Whiteman, Chris Neely, Dave Jukich, David Cohn, Derek Mulrey, Eric Frank, Ian Silsby, and Natalie Chow. MotionPoint's salespeople generally store documents in a centralized file repository, but Charles Whiteman also had some locally stored files and searched them based on his prior knowledge of their organization and content. The sales directory is divided into a

number of categories, including: business plans, pricing documents, and sales accounts. The sales accounts category is organized by customer (or prospective customer) name, and includes key communications with customers, including sales proposals, customer presentations, pricing information, and draft emails. The contents of these categories were copied and produced.

17. For requested documents concerning communications between MotionPoint and potential or actual investors relating to MotionPoint's products using any invention in the asserted MotionPoint patents, as the principal point of contact with MotionPoint's investors, I searched my local email archive. I also inspected my paper documents and computer file folders for documents sent to or received from investors that might not be present in the emails.

18. All the foregoing led to the production of over thirty gigabytes of documents, including over six thousand emails and attachments.

19. Eight months later, TransPerfect suggested that MotionPoint's production was insufficient regarding customer communications related to patents, TransPerfect, Translations.com, and/or the accused OneLink service, and regarding communications with customers and investors.

20. Because TransPerfect was now seeking all communications—rather than only those "relating to MotionPoint's products using any invention in the MotionPoint Asserted Patents", I conducted a further search of my local email archive for all of the investor communications.

21. TransPerfect also provided a list of search terms for MotionPoint to use. MotionPoint informed TransPerfect that their list was overly broad, but nonetheless consented to use them to search the sales email database. In response, TransPerfect sent more terms, bringing the list to over 150 terms, including: TransPerfect*, Translations.com*, "Website translation*", OneLink*, Lakritz*, LAI*, "Language Automation*", WebPlexer*, patent*, 6,526,426*, "*426 patent", 7,207,005*, "*005 patent", Quagnito*, "English to Spanish", "Spanish to English", "English-to-Spanish", "Spanish-to-English", "English-Spanish", "Spanish-English", "English:Spanish", "Spanish:English", WebCATT*, TransMotion*, TransSync*, One-link*, "Translation Server", TransScope*, Tcontrolpanel*, "Web conversion service", "Machine

Translation Tool", Prox*, Crawl*, Spider*, Pars*, MotionPortal*, EasyLink*, Language and layer*, 7,580,960, "*960 patent", 7,584,216, "*216 patent", 7,627,479, "*479 patent", 7,627,817, "*817 patent", Giftbaskets.com*, "Best Buy*", Sears*, Audi*, RadioShack*, SonyStyle*, "American Heart Association", "State of Florida", TP*, Big* and private*, Large* and private*, Krist* and hansen, Riverwood*, Lilly*, Strategic and insight*, Lateral and capital, Bmo and nesbitt, Varelas*, Vitton*, Alvarez and demalde, Alvarez-demalde*, Pric*, "word count", Statistics, stats, Revenue, Profit, Loss, P/L, Rollup, Competit*, Gproxy, Smartling, Shawe, pshawe, Pennell, tpennell, Michael and sank, Mik* and sank, Msank*, Hauser, Mhauser*, Elting, Eelting*, Infring*, Invalid*, WizArt, WizTom, Systran*, World Lingo, WorldLingo*, 6,857,022, "*022 patent", Scanlan*, GlobalLink, Capano, Frank and Strong, Dick and McCusker, Richard and McCusker, Bruce and Hurd, Tom and Moore, Thomas and Moore, Barry and Koss, Herb and Hedges, Lauren and Kessler, Richard and Merel, "Cody Investments", Pamela and Zall, Steve and Gold, Steven and Gold, Stephen and Gold, Ray and Yarkin, Raymond and Yarkin, Edgar and Fleming, Ed and Fleming, "Balance sheet", "Financial statement", "tax return", Google and Translate, SDL*, E-lingo*, Intertran*, TransLingo*, BabelFish*, "intellectual property", IP, Patent*, TheOne, "The One", Sheng, 73464, 80036, 93089, Wu, 15219, LEC, NetMask, "Net Mask", Marmor, 6,601,108, "*108 patent", 6,665,642, "*642 patent", WebSphere, Kanevsky, assets, liabilities, dividend*, equity, fiscal, securities, and valuation.

22.   TransPerfect then requested that MotionPoint itself come up with even more search terms beyond that extensive list. We could not conceive of additional terms that would supposedly yield emails not already within the scope of the search terms in TransPerfect's lengthy list.
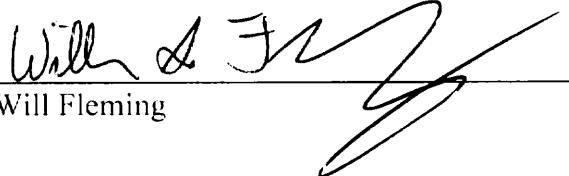
23.   The sales team uses an email program named GoldMine, which automatically stores emails to a centralized sales email database, but GoldMine only comes with a basic search function for keyword searching that requires each email resulting from a search to be extracted and saved individually. To carry out the search using TransPerfect's lengthy list of search terms without that taking an inordinate amount of time and resources, I directed an outside consultant and an internal programmer to create new software and computer scripts to add to GoldMine a

capability allowing us to extract a large volume of emails at once from search results. Once that programming was completed. I had the search with TransPerfect's search terms carried out on the sales email database, which led to the production of over 1.4 million emails of the 1.9 million emails present on the database.

24. After that, I had people who store emails locally conduct searches using TransPerfect's search terms on their local email archives. These searches led to the production of over a quarter million additional emails.

25. The searches conducted to date have covered the documents and emails of seventeen people. including MotionPoint's entire sales team. MotionPoint's developers. every inventor of each asserted MotionPoint patent, and MotionPoint's Chief Technology Officer, Chief Operating Officer. and Chief Executive Officer.

I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct. Executed at Coconut Creek, Florida on the __12__ th day of December, 2011.

_____
Will Fleming